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No. 85-585

IN THE

Supreme Court of the United States

October Term, 1985

DISTRICT 2, UNITED MINE WORKERS OF AMERICA, GEORGE ZAYAC and JANET ZAYAC,
Petitioners

v.

THE HELEN MINING COMPANY,
Respondent

and

HARRISON COMBS, JOHN J. O'CONNELL and PAUL R. DEAN, as Trustees of the UNITED MINE WORKERS OF AMERICA HEALTH AND RETIREMENT FUNDS

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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QUESTION PRESENTED

Whether the Court of Appeals properly held that the enforcement by the Trustees of an eligibility requirement for health benefits which was established through collective bargaining could not be set aside by a court unless such action violated federal law or policy.

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DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST

Respondent, The Helen Mining Company, is a wholly owned subsidiary of The Valley Camp Coal Company. Quaker State Oil Refining Corporation is the parent corporation of The Valley Camp Coal Company. Other wholly owned subsidiaries of The Valley Camp Coal Company and affiliates of The Helen Mining Company include Donaldson Mine Company, Shrewsbury Coal Company, Elm Grove Coal Company, Valley Camp of Utah, Inc., Kanawha and Hocking Coal & Coke Company, Kelley's Creek and Northwestern Railroad Company, Great Lakes Coal and Dock Company, and Pennsylvania and West Virginia Supply Corporation.

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STATEMENT OF THE CASE

I. Procedural History

On November 1, 1983, the Trustees of the United Mine Workers of America Health and Retirement Funds ("Trustees") issued a written decision upholding the denial by The Helen Mining Company ("Helen") of a claim of petitioners, George and Janet Zayac, for certain medical benefits under the Employee Benefit Plan maintained by Helen for its classified employees pursuant to the provisions of Article XX, Section (c)(3)(i) of the National

Bituminous Coal Wage Agreement of 1981 ("1981 Wage Agreement").

On or about January 16, 1984, petitioners filed a complaint against Helen and the Trustees in the United States District Court for the Western District of Pennsylvania ("District Court") seeking to have the Trustees' decision set aside and further seeking to have Helen held responsible for the payment of medical costs in the amount of $17,612.30. The complaint asserted jurisdiction pursuant to the provisions of Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185 ("LMRA"), and Section 502 of the Employee Retirement Income Security Act, 29 U.S.C. § 1132 ("ERISA").

On October 9, 1984, after petitioners and respondent Helen had each filed motions for summary judgment, the District Court issued a Memorandum Opinion and Judgment Order (App. B) which, *inter alia*, granted petitioners' motion, denied Helen's motion and entered judgment in favor of petitioners and against Helen in the amount of $17,612.30. The Judgment Order also granted the Trustees' motion to dismiss (App. B).

Respondent Helen appealed from the District Court's decision and on May 31, 1985, the United States Court of Appeals for the Third Circuit ("Circuit Court") issued its Opinion and Order (App. A, C) reversing the District Court and remanding the case with directions to enter summary judgment on behalf of Helen. A Judgment Order was then issued by the District Court on June 3, 1985 granting Helen's motion for summary judgment (App. E).

Petitioners' out-of-time petition for rehearing en banc was accepted and then denied by the Circuit Court

on July 5, 1985 (App. D). This petition for writ of certiorari then followed.

II. Factual Background

Petitioners George and Janet Zayac are individuals residing in Indiana County, Pennsylvania. George Zayac was employed by Helen as a classified employee and was, at all relevant times, President of Local 1610, UMWA. Classified employees of Helen are represented for purposes of collective bargaining by the UMWA, International Union, its geographic division, District 2, UMWA and Local 1610, UMWA.

Helen and the UMWA were signatories to the 1981 Wage Agreement, a multi-employer bargaining agreement which established the hours, wages and conditions of employment of classified employees of Helen. Pursuant to the provisions of Article XX, Section (c)(3)(i) of the 1981 Wage Agreement, Helen had established and maintained a Benefit Plan for its classified employees for the purpose of providing health and other non-pension benefits to eligible participants and their dependents.

Prior to 1978, health and other non-pension benefits were provided to classified employees of signatory employers, including Helen, pursuant to the provisions of the 1974 Benefit Plan and Trust, which was administered by the Trustees, or their predecessors. The National Bituminous Coal Wage Agreement of 1978 ("1978 Wage Agreement") provided for the first time for the establishment and maintenance by the signatory operators of employee benefit plans to provide health and other non-pension benefits to their classified employees.

Statement of the Case.

In establishing the employee benefit plans to be maintained and implemented by the signatory operators after 1978, the Bituminous Coal Operators Association ("BCOA"), a multi-employer bargaining association of which Helen was a member, and the UMWA negotiators reviewed all of the interpretations that had been established previously and utilized by the Trustees and, during the course of bargaining, adopted, revised or rejected those interpretations. What was finally agreed upon in negotiations was then inserted into the United Mine Workers of America 1950 Benefit Plan and Trust, the 1974 Benefit Plan and Trust and the employee benefit plans to be maintained and implemented by the signatory operators.

Under the Benefit Plans maintained by Helen and other signatory employers for their classified employees, *prior approval* by the Plan Administrator was necessary to obtain coverage for certain types of surgical procedures and expenses. The prior approval eligibility requirement was among those that were discussed and adopted as a part of the Benefit Plans during and as a result of collective bargaining between the UMWA and BCOA during negotiation of the 1978 Wage Agreement. Moreover, the prior approval requirement was carried forward in the benefit plans maintained by signatory operators, including Helen, under the 1981 Wage Agreement.

With regard to coverage for the treatment of pathological, morbid forms of severe obesity (the condition for which Mrs. Zayac was treated), Article III, Sections A(3)(f) and A(11)(a)(25) of the Helen Benefit Plan re-

quired that all three of the following conditions be satisfied to obtain coverage:

1. The beneficiary has a pathological morbid form of severe obesity (two or more times the desirable weight);
2. Other more conservative therapies have been tried and proved unsuccessful; and
3. *Prior approval has been obtained from the Plan Administrator.*

Helen's employees were made aware of the foregoing and other requirements of the Benefit Plan through Summary Plan Descriptions which were distributed to all classified employees by Helen. Such a Summary Plan Description would have been distributed to Mr. Zayac prior to the incident in question.

On or about July 8, 1982, Janet Zayac underwent gastric bypass surgery for treatment of a morbid obesity condition. It is undisputed that neither the Zayacs, nor their treating physician, sought or obtained prior approval for said surgery from Helen's Plan Administrator. Although it is not material to the resolution of the petition, Helen disputes petitioners' assertion that neither the Zayacs nor their treating physician were aware of the prior approval requirement.

On or about September 16, 1982, after the claim for benefits was denied, District 2, UMWA, on behalf of the Zayacs, filed a request for Resolution of Dispute with the Trustees pursuant to Article XX, Section (e)(6) of the 1981 Wage Agreement. Pursuant to that subsection, all disputes arising under the 1981 Wage Agreement with regard to employee benefit plans were to be resolved by the Trustees. In addition, Article XX, Section (e)(6) pro-

vided that the decision of the Trustees "shall be final and binding on the parties."

On November 1, 1983, the Trustees issued a written decision upholding the denial by Helen's Plan Administrator of the Zayacs' claim and further holding that Helen was not responsible for the payment of the charges incurred because neither the Zayacs nor their physician had sought or obtained prior approval from the Plan Administrator.

Helen does not agree with the comments and responses attributed to Mr. Piccolini and Mr. Hedgepeth, as set forth in the last full paragraph on page 5 and the first paragraph on page 6 of petitioners' statement of the case. Affidavits were submitted in the District Court explaining and refuting such assertions. However, inasmuch as they do not raise factual issues which are material to the resolution of this petition, Helen will not comment further at this time.

As noted, the District Court set aside the aforementioned decision of the Trustees. Even though it was undisputed that the prior approval requirement was derived as a result of collective bargaining, the District Court held that the Trustees' action was subject to judicial review under an arbitrary and capricious standard. The District Court further held that the Trustees' application of the prior approval requirement in the instant case was arbitrary and capricious because it frustrated the purpose of that requirement which, according to the District Court, was to insure that benefits were paid only in those instances where it was determined that the surgery was medically necessary (App. A, p. 23a).

The Circuit Court reversed and, relying on this Court's decision in *United Mine Workers of America Health and Retirements Funds v. Robinson*, 455 U.S. 562, 102 S. Ct. 1226, 71 L. Ed. 2d 419 (1982), held as follows:

> The courts are not free to modify the terms of collectively bargained benefit plans nor can the action of trustees taken in enforcing the unambiguous language of the prior approval requirement of such a benefits plan be termed arbitrary or capricious.

(App. A, p. 13a.)

REASONS FOR DENYING THE WRIT

I. SUMMARY OF ARGUMENT

In the instant case, the Circuit Court, relying upon this Court's decision in *Robinson, supra*, held that an eligibility requirement for health care benefits which was established through collective bargaining could not be set aside as being arbitrary or capricious unless its enforcement violated federal law or policy.

Petitioners would have this Court review the Circuit Court's ruling on the basis (1) that the decision of this Court in *Robinson* should be narrowly construed and that the Circuit Court improperly extended its scope and intent; and (2) that the Circuit Court's decision in this case is in conflict with decisions of other Courts of Appeals. Helen respectfully disagrees with both contentions.

The decision and rationale of this Court in *Robinson* is applicable to any situation where the eligibility requirement under review, including its enforcement or administration, is established through the collective bar-

gaining process. Thus, where, as here, the prior approval requirement is a product of collective bargaining, the action of the plan administrator or trustees in enforcing that requirement is not subject to review under a general reasonableness standard and should not be set aside unless its enforcement would violate federal law or policy.

The decision of the Circuit Court in this case is completely consistent with the decisions of other Courts of Appeals. In those situations where trustees' actions have been subject to review under a reasonableness standard, the involved regulation was unilaterally established by trustees or plan administrators, rather than through the collective bargaining process. This critical distinction was established by this Court in *Robinson* and has been recognized and followed by the Circuit Court in this case and by the Courts of Appeals in the cases cited by petitioners.

In short, no basis exists for review by this Court of the Circuit Court's decision.

II. Enforcement of collectively-bargained provisions in a health or pension plan is not subject to review on a standard of reasonableness.

In *Robinson*, this Court held that where an eligibility requirement regarding health benefits was derived from collective bargaining, it should not be disturbed or set aside by a court in the absence of a finding that the requirement violated federal law or policy. 455 U.S. at 575. The collective bargaining provision in the 1974 Wage Agreement challenged in *Robinson* had provided different levels of health benefits for two classes of widows of coal miners.

Reasons for Denying the Writ.

The United States Court of Appeals for the District of Columbia had held that the provision was arbitrary and violated Section 302(c)(5) of the LMRA, 29 U.S.C. § 186(c)(5). 640 F.2d 416 (D.C. Cir. 1981). However, this Court reversed the Court of Appeals, holding that provisions relating to the receipt of health benefits *set forth in a collective bargaining agreement* are not subject to review under a reasonableness standard and can only be challenged if they violate federal law or policy. 455 U.S. at 574-75.

In so holding in *Robinson*, this Court expressly distinguished a group of cases which had applied a reasonableness standard in reviewing Fund eligibility requirements and benefit levels. However, this Court observed that the aforementioned cases involved situations "in which trustees of employee benefit trust funds, not the collective-bargaining agreement, fixed the eligibility rules and benefit levels." 455 U.S. at 573. As this Court further observed, the Trustees in *Robinson*, like the Trustees in this case, had not been "given 'full authority' to determine eligibility requirements and benefit levels . . ." *Id.* Instead, the eligibility requirements and benefit levels had been "fixed by the 1974 collective-bargaining agreement" and the Trustees were "obligated to enforce" those determinations. 455 U.S. at 573-74.

The same situation is presented in this case. The Benefit Plan established by the 1981 Wage Agreement provided that three requirements had to be satisfied before a beneficiary such as petitioner Zayac became eligible for health benefits for certain surgical procedures. One of the requirements, *viz.*, prior approval by the plan administrator, had admittedly not been satisfied in this

case. Accordingly, Helen and its Plan Administrator declined to pay for the surgical procedure and the Trustees, as they were "obligated" to do, enforced the negotiated requirement and upheld Helen's denial of benefits. The Circuit Court, consistent with this Court's decision in *Robinson*, held that the Trustees' action could not be set aside by a court unless enforcement would violate federal law or policy (App. A, p. 11a).

1. ROBINSON SHOULD NOT BE NARROWLY CONSTRUED.

In an effort to create a conflict between the Circuit Court's decision in this case and other Courts of Appeals' decisions, petitioners attempt to construe *Robinson* narrowly. To begin with, petitioners contend that *Robinson* does not apply where a party does not seek to invalidate an eligibility rule. In a similar vein, petitioners argue that *Robinson* does not preclude a court from reviewing the decisions and actions of trustees in "administering" collectively-bargained eligibility requirements.

Although *Robinson* factually involved a challenge to a benefit provision, as contrasted with the administration or enforcement of a benefit provision by trustees, there is simply no indication in this Court's opinion that the holding in *Robinson* was intended to be limited to situations where a party seeks to invalidate an eligibility requirement. To the contrary, as the Circuit Court observed in this case, this Court in *Robinson* appeared to have contemplated a situation where the plan was being administered by trustees, stating as follows:

> 'Absent conflict with federal law, then, the trustees breached no fiduciary duties in *administering* the 1950 Benefit Trust in accordance with the terms

established in the 1974 collective-bargaining agreement.' 455 U.S. at 574, 102 S.Ct. at 1233.

(App. A, p. 11a, emphasis added.)

It is submitted that the Circuit Court properly interpreted this Court's holding in *Robinson* as precluding review, under a general reasonableness standard, of challenges to the administration or the enforcement of *collectively-bargained* eligibility requirements. The significance of the *Robinson* decision lies in the fact that the eligibility requirement in question was not established by the trustees in the exercise of their discretionary authority but was, instead, fixed by collective bargaining. Thus, regardless of whether the case involves a challenge to a regulation itself or to its enforcement or administration by trustees, the rationale of *Robinson* applies equally to both situations so long as it involves, as here, a collectively-bargained regulation. In each case, the trustees are obligated to enforce the collectively-bargained regulation and the courts cannot invalidate the trustees' action or modify the regulation unless it violates federal law or policy.

Petitioners cite the case of *Moore v. Reynolds Metals Co. Retirement Program*, 740 F.2d 454 (6th Cir. 1984), in support of their restrictive interpretation of *Robinson*. In *Moore*, the Sixth Circuit found the logic of *Robinson* persuasive in a situation where the eligibility provision in the pension plan was not established in a collective bargaining agreement but was created unilaterally by the employer in response to ERISA requirements.

Petitioners point to the *Moore* Court's comments distinguishing the case of *Sellers v O'Connell*, 701 F.2d 575 (6th Cir. 1983). It is true that *Sellers* did indicate that

a court may review the *administration* of a pension plan to determine whether the provisions are applied in an arbitrary or a capricious manner. *Id.* at 577. However, as the *Moore* Court pointed out, although the pension plan in *Sellers* was established pursuant to a collective bargaining agreement, the fund's trustees had passed a resolution which was *not* a part of the collective bargaining agreement. Thus, as was observed in *Moore*, the *Sellers* Court was simply permitting review of a trustee-adopted resolution to determine whether it was arbitrary or capricious. *Moore*, 740 F.2d at 456, n. 4.

The decisions in *Moore* and *Sellers* are, therefore, completely consistent with the Circuit Court's decision in this case. The prior approval eligibility requirement involved herein was established not by the Trustees but by the negotiators during collective bargaining. Consequently, the requirement is not subject to review under a reasonableness standard. Alternatively, even if the decision was subject to review under a reasonableness standard, the action of the Trustees was not arbitrary or capricious unless it violated federal law or policy.

Petitioners also point to language in the *Moore* case which indicates that courts may review trustees' decisions in administering or interpreting a pension plan once the plan is established. It is apparent from the cases cited by the *Moore* Court that it was referring to situations in which trustees had been called upon to administer a plan and to interpret *ambiguous* plan provisions regarding pension eligibility, 740 F.2d at 457. This is to be contrasted with trustees' action, as here, and in *Robinson*, in enforcing *unambiguous* health plan provi-

sions which were established in the process of collective bargaining.

2. PETITIONERS ARE REALLY CHALLENGING THE ELIGIBILITY REQUIREMENT ITSELF.

Even if *Robinson* could be interpreted as only precluding review of challenges to eligibility requirements themselves, as contrasted with the administration or enforcement of those requirements, it is apparent that the District Court (as do petitioners herein) really challenged the requirement itself. In that regard, the Circuit Court observed as follows in this case:

> . . . [I]t is apparent that the district court undertook to examine the reasonableness of the prior approval requirement. Although its decision is couched in terms of the absence of 'rational justification' for 'the trustees' interpretation,' the court was, in effect striking a particular eligibility requirement as itself unreasonable, since the trustees were applying the express requirement for eligibility that was written into the plan.

(App. A, p. 12a.)

Petitioners continue to contend that they are only seeking to have the prior approval requirement held to be "unjust [or unreasonable] under the facts of this case . . ." (Petition at 9.) However, the collectively-bargained prior approval requirement was unqualified. If the negotiators had desired to waive the requirement in situations where the claimant could subsequently establish that he had met all of the other requirements, they could have done so. However, they did not and any attempt by the Trustees or a court to apply the prior ap-

proval requirement in such a manner would constitute an improper modification of "the substantive terms of a collective-bargaining contract." *Robinson*, 455 U.S. at 576.

3. THE PRIOR APPROVAL REQUIREMENT WAS THE RESULT OF COLLECTIVE BARGAINING.

Petitioners also attempt to distinguish the instant case from *Robinson* on the basis that the prior approval requirement involved herein "is grounded in a discretionary determination of the Trustees and not a collectively bargained provision." (Petition at 10.) More specifically, petitioners point to the fact that during the negotiation of the 1978 Wage Agreement, negotiators for BCOA and the UMWA adopted as a part of the employee benefit plans certain interpretations that had been utilized and established by the Trustees prior to 1978, including the prior approval requirement for certain surgical procedures.

The origin of the prior approval rule is insignificant. The critical fact is that it was discussed and adopted during and as a result of collective bargaining between the UMWA and BCOA, and became a part of the employee benefit plan that was first established in the 1978 Wage Agreement and then carried forward in the 1981 Wage Agreement. The Trustees were not given the discretionary authority to determine the eligibility requirements or to modify their terms, except in limited situations not applicable herein (App. A, p. 5-6a). In the latter regard, it should be noted that the contract provision challenged in *Robinson* also appears to have had its origin in resolutions previously adopted by the Trustees. 455 U.S. at 423-24.

4. CLAIMANTS' PROTECTION LIES IN THE COLLECTIVE BARGAINING PROCESS.

Petitioners also argue in their petition that the effect of the Circuit Court's decision in this case is to eliminate any protection that claimants have from allegedly arbitrary and capricious "interpretation of a plan requirement." (Petition at 14.) Initially, it should be noted that little if any interpretation was needed by either the Plan Administrator or the Trustees to determine whether or not petitioners Zayac had obtained "prior approval" in this case. Moreover, it is submitted that the protection that claimants enjoy lies in the collective bargaining process and in their ability to obtain changes in the collectively-bargained requirements for health benefits in succeeding contracts. It is no more or less than the protection afforded signatory employers with respect to provisions in a collective bargaining agreement which they come to perceive as undesirable during the term of an agreement.

III. The Circuit Court's decision in this case is not in conflict with the decisions of other Courts of Appeals.

Petitioners argue that the decision of the Circuit Court in this case is in direct conflict with decisions of other Courts of Appeals. Helen respectfully disagrees. In each of the cases cited by petitioners, the disputed plan provision had been established or formalized by trustees and had not been established in collective bargaining. This distinction is critical and was the basis of this Court's decision in *Robinson* and the Circuit Court's decision in the instant case.

Conclusion.

CONCLUSION

For these reasons, the petition for certiorari should be denied.

Respectfully submitted,

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